

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
FAYYAZ A. KAHN	:	DETERMINATION
	:	DTA NO. 818205
for Redetermination of a Deficiency or for Refund of New York State and New York City Income Taxes under Article 22 of the Tax Law and the New York City Administrative Code for the Year 1994.	:	

Petitioner, Fayyaz A. Khan, 21-25 147th Street, Whitestone, New York 11357, filed a petition for redetermination of a deficiency or for refund of New York State and New York City income taxes under Article 22 of the Tax Law and the New York City Administrative Code for the year 1994.

A small claims hearing was held before Thomas C. Sacca, Presiding Officer, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York, on March 26, 2002 at 1:15 P.M., with all briefs to be submitted by May 10, 2002, which date began the three-month period for the issuance of this determination. Petitioner appeared by pro se. The Division of Taxation appeared by Barbara G. Billet, Esq. (Mac Wyszomirski).

ISSUES

I. Whether the Division of Taxation properly determined that petitioner failed to file a New York State income tax return for the year 1994.

II. Whether the Division of Taxation properly determined the amount of petitioner's Federal adjusted gross income for the year at issue.

FINDINGS OF FACT

1. For the year 1994, petitioner filed a U.S. Individual Income Tax Return which indicated Federal adjusted gross income of \$24,194.00. The return indicated petitioner's address as 70-35 Broadway, Apt. D-24, Jackson Heights, New York.

2. Petitioner failed to file a New York State Resident Income Tax Return for the year 1994. On November 16, 1998, the Division of Taxation ("Division") issued to petitioner a Statement of Proposed Audit Changes indicating it did not have a record of his 1994 New York State income tax return on file. The statement further provided that:

Section 6103(d) of the Internal Revenue Code allowed us to get information from the Internal Revenue Service. This information showed you filed a federal income tax return using a New York State address.

We used the information from your federal return and computed your tax as a New York resident. The starting point for computing your New York tax is federal adjusted gross income. We allowed subtractions to income and any appropriate child care credit and earned income credit based on the federal information.

* * *

Since the address on your federal return shows your residence was in New York City, we have also computed city of New York resident tax.

Penalties were imposed for late filing (Tax Law § 685[a][1]), negligence (Tax Law § 685[b][1]) and intentional disregard of the Tax Law (Tax Law § 685[b][2]).

The computation of the additional amount due as indicated on the Statement of Proposed Audit Changes was as follows:

New York Adjusted Gross Income:	\$24,194.00
New York Standard Deduction:	(6,000.00)
New York Taxable Income:	\$18,194.00
NYS Tax on Taxable Income:	\$1,073.00
New York State Household Credit:	(40.00)
Total New York Taxes:	\$1,033.00
City of New York Resident Tax:	587.00

Total NYS and NYC Taxes:	\$1,620.00	
Total Tax Withheld:		(261.45)
Tax Due:		\$1,358.55

3. On January 11, 1999, the Division issued to petitioner a Notice of Deficiency asserting additional tax due of \$1,358.55, plus penalty and interest.

4. The Internal Revenue Service (“IRS”) issued to petitioner on March 29, 1999 a revised statement of account which indicated that wages in the amount of \$11,700.00 were improperly included in petitioner’s Federal adjusted gross income. In response to the reaudit by the IRS, the Division revised its assessment as follows:

NY Adjusted Gross Income as Previously Stated		\$24,195.00
Less: Income Adjustment per IRS ReAudit		(11,700.00)
Corrected Adjusted Gross Income		\$12,495.00
Standard Deduction		(6,000.00)
Corrected Taxable Income		\$6,495.00
New York State Tax	\$269.00	
New York City Tax	163.00	
Household Credit (NYS)	(75.00)	
Household Credit (NYC)	(15.00)	
Corrected Additional Tax		\$342.00

CONCLUSIONS OF LAW

A. Petitioner was required to file a New York State personal income tax return for the year 1994 (*see*, Tax Law § 651[a]), as he was a resident of New York State having Federal adjusted gross income for the year at issue. The New York State return that was produced on his behalf was undated and unsigned, and is legally insufficient, without proof of mailing, to establish that petitioner’s 1994 New York State personal income tax return was filed (*Matter of*

Schumacher, Tax Appeals Tribunal, February 9, 1995; *Matter of Savadjian*, Tax Appeals Tribunal, December 28, 1990).

B. The Division placed into evidence the Statement of Proposed Audit Changes and a computer-generated report of petitioner's Federal income tax return which established that his New York State tax liability was based upon his filed Federal return. Therefore, the burden of proof was upon petitioner to show that the Notice of Deficiency was incorrect (Tax Law § 689[e]; *see, e.g., Matter of Delia v. Chu*, 106 AD2d 815, 484 NYS2d 204). Here, petitioner produced documentation from the Internal Revenue Service indicating a reaudit was performed which resulted in the reduction of petitioner's Federal adjusted gross income. The Division recalculated petitioner's income tax deficiency by applying the results of the Internal Revenue Service's reaudit to its recomputation of additional tax due (*see* Finding of Fact "4"). No further documentation or evidence was submitted by petitioner challenging the results of the Division's recomputation. Therefore, the tax liability for the year at issue, as modified by the Division, is sustained.

C. As petitioner did not address the issue of the penalties imposed, such penalties are sustained.

D. The petition of Fayyaz A. Khan is granted to the extent indicated in Conclusion of Law "B", the Division of Taxation is directed to recompute the Notice of Deficiency dated January 11, 1999 consistent with the determination rendered herein and taking into account any amounts withheld on petitioner's behalf; and, except as so granted, the petition is in all other respects denied.

DATED: Troy, New York
July 3, 2002

/s/ Thomas C. Sacca
PRESIDING OFFICER